IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.28 OF 2004

Prakash Krishna Jadhav & Anr. ...Appellants
Vs.
Sarubai Bhau Barge & Ors ...Respondents

Shri V.B. Rajure for the Appellants.
Shri R.G. Ketkar for for the Respondents.

CORAM : ABHAY S. OKA, J.
DATE : MAY 05, 2006.

P.C.:

1. Heard Shri Rajure appearing for the Appellants and Shri R.G. Ketkar appearing for the Respondents. The Appellants are the original Defendant Nos.1 and 3. The Respondent No.1 is the original Plaintiff and the Respondent Nos.2 to 6 are the original Defendant Nos.2 and 4 to 7.

2. The Respondent No.1 filed a suit for partition and separate possession in respect of the lands described in paragraph 1A of the plaint and house properties described in paragraph 1B of the plaint. According to the case of the Respondent No.1, the suit properties are the ancestral properties of deceased Krishna. The said Krishna was the father of the Respondent Nos.1 and 2. The Appellant No.1 was adopted by deceased Krishna in the year 1968. The Respondent No.1 claimed 1/3rd share in the suit

properties. The case of the Appellant No.1 was that Krishna died in the year 1971 without leaving any male issue. Krishna adopted the Appellant No.1 on 08th March, 1968. The Appellants pointed out that the Respondent No.2 resided with her husband for a period of about six to seven years and thereafter she came back and started residing with deceased Krishna as her husband refused to maintain her. Therefore, deceased Krishna executed a Gift Deed in favour of the Respondent No.2 on 08th March, 1968 in respect of the lands bearing Gat Nos.514, 651, 480 and 422 and a portion of the house property.

3. The Appellant No.1 pointed out that though the Respondent No.1 was aware about the Gift Deed he has not referred to the Gift Deed in the Plaint. According to the case of the Appellant No.1, on 01st March, 1982 the Respondent No.2 sold the suit lands bearing Gat Nos.514, 651, 422 and 480 in his favour by accepting consideration of Rs.13,000/-.

4. The second Respondent filed written statement and contended that the Sale Deed dated 01st March, 1982 was obtained from her by the Appellant No.1 by practising fraud.

5. The Trial Court held that the Appellant No.1 has failed to establish execution of gift by deceased Krishna in favour of the Respondent No.2. The Trial Court passed decree for partition in favour of the Respondent No.1 holding that he had 1/6th share in the suit properties. An Appeal preferred by the present Appellants has been dismissed by the first Appellate Court and hence this Second Appeal has been preferred.

6. Shri Rajure appearing for the Appellants submitted that deceased Krishna was entitled to execute gift in respect of the property in question in favour of his daughter as he had no male heir on that day. He submitted that the courts below have committed an error by holding that the gift executed by the Respondent in favour of the Respondent no.2 was not binding on the Respondent No.1 as the Respondent No.1 had not consented to the said gift.

7. Shri Ketkar appearing for the Respondents placed reliance on the decision of the Supreme Court reported in AIR 2000 Supreme Court 3529 (Thimmaiah and Ors. Vs. Ningamma and Anr.) and supported the impugned judgment and decree.

8. I have heard the submissions. The Appellate

Court has recorded a finding that after coming into force of Hindu Succession Act, 1956 the deceased Krishna had no right to execute gift in favour of his daughter without obtaining consent of the Respondent No.1. In view of the law laid down by the Apex Court in the case of Thimmaiah (supra), no fault can be found with the said finding. Shri Rajure attempted to submit that the gift was executed for pious purposes. I find that this factual aspect is not argued before the first Appellate Court. Once it is held that the gift was not binding on the Respondent No.1-Plaintiff, the Appellant No.1 cannot get any right on the basis Sale Deed executed by the Respondent No.2 in his favour as the basis of execution of the Sale Deed is the gift in dispute. The alleged gift by deceased Krishna is not binding on the Respondent No.1.

9. No fault can be found with the decree for partition and possession passed by the Trial Court and confirmed by the Appellate Court. No substantial question of law arises. Second Appeal is dismissed with no orders as to costs.

10. At this stage, the learned Advocate for the Appellants prays that ad-interim relief which was operating till today may be extended for a reasonable

period. The said prayer is opposed by the Advocate for the Respondents.

11. Considering the facts and circumstances of the case, ad-interim order passed on 14th January, 2004 is extended by a period of ten weeks from today.

JUDGE